

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CORNELL DAVIS,

Plaintiff,

v.

J. PENA, et al.,

Defendants.

Case No. 1:22-cv-00114-BAK-SAB (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DENY PLAINTIFF’S MOTION TO  
PROCEED *IN FORMA PAUPERIS***

(Doc. No. 8)

**14-DAY DEADLINE**

Clerk of Court to Assign a District Judge

Plaintiff Cornell Davis is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983.

Plaintiff initiated this action by filing a complaint on January 27, 2022, along with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.)

**I.**

**LEGAL STANDARD**

28 U.S.C. § 1915(a)(1) permits a plaintiff to bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff’s “is unable to pay such fees or give security therefor.” A prisoner seeking to bring a civil action must, in addition to filing an affidavit, “submit a certified copy of the trust fund account statement . . . for the

1 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate  
2 official of each prison at which the prisoner is or was confined.” 28 U.S.C. § 1915(a)(2).

3 **II.**

4 **DISCUSSION**

5 Plaintiff has filed an application declaring that, due to his poverty, he is unable to pre-pay the  
6 full amount of fees and costs for these proceedings or give security therefor, and that he believes that  
7 he is entitled to the relief sought in his complaint. Plaintiff attached a copy his inmate statement  
8 report from Kern Valley State Prison. (ECF No. 2.) The statement provides the activity in Plaintiff's  
9 inmate trust account from August 1, 2021 to January 26, 2022, and reflects that Plaintiff currently has  
10 an available sum of \$764.60 on account to his credit at Kern Valley State Prison. The statement also  
11 reflects that in the past three months, Plaintiff has carried a balance in excess of \$2,000.00. Thus, the  
12 activity in Plaintiff's account reflects that he has the resources to pay the \$402.00 filing fee for this  
13 action.

14 Based on the foregoing, the information that Plaintiff has provided to the Court reflects that he  
15 is financially able to pre-pay the entire filing fee to commence this action. Although the Ninth  
16 Circuit Court of Appeals has held that “the filing fee . . . should not take the prisoner's last dollar,”  
17 Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995), in these circumstances, Plaintiff appears to  
18 have sufficient funds to pre-pay the \$402.00 filing fee with money left over. Should Plaintiff have  
19 additional information to provide the Court or should his available balance change by the time he  
20 receives this order, he may notify the Court. However, the Court has the authority to consider any  
21 reasons and circumstances for any change in Plaintiff's available assets and funds. See also Collier v.  
22 Tatum, 722 F.2d 653, 656 (11th Cir. 1983) (district court may consider an unexplained decrease in an  
23 inmate's trust account, or whether an inmate's account has been depleted intentionally to avoid court  
24 costs).

25 Therefore, Plaintiff's motion to proceed *in forma pauperis* must be denied. If Plaintiff wishes  
26 to proceed with this action, Plaintiff must pre-pay the \$402.00 filing fee in full.

27 ///

28 ///

III.

RECOMMENDATIONS

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED; and
2. Plaintiff be ordered to pay the \$402.00 filing fee in full in order to proceed with this action.

The Clerk of Court is DIRECTED to assign a district judge to this case.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that the failure to file objections within the specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 2, 2022

  
UNITED STATES MAGISTRATE JUDGE